



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-10-445
Regulation title	State Plan Under Title XIX of the Social Security Act Medical Assistance Program: General Provisions
Action title	Recovery Audit Contractors
Final agency action date	March 19, 2012
Document preparation date	March 13, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

This action is being promulgated pursuant to Code of Virginia § 2.2-4006(A)(4)(c), because these changes are "[n]ecessary to meet the requirements of federal law or regulations" and these "regulations do not differ materially from those required by federal law or regulation."

On October 1, 2010, the Centers for Medicare and Medicaid Services (CMS) published a State Medicaid Director letter, informing states that, pursuant to Section 6411 of the Affordable Care Act (P. L. 111-148), CMS was requiring states to establish programs to contract with Recovery Audit Contractors (RACs) to audit payments to Medicaid providers. Recovery Audit Contractors are contingency-fee-based Third Party Liability recovery contractors. CMS is requiring states to submit a State Plan Amendment (SPA) to establish the RAC program. This state plan amendment was submitted to CMS and was approved.

CMS provided the states with a pre-printed State Plan form, with check boxes to indicate the state's compliance with the federal RAC requirements. These requirements are defined in 1902(a) of the Social Security Act, as amended by Section 6411 of the Affordable Care Act, which added paragraph 42(B). Paragraph 42(B) requires that states

establish a program under which the State contracts (...) with 1 or more recovery audit contractors for the purpose of identifying underpayments and overpayments and recouping overpayments under the State plan and under any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver.

The Social Security Act also sets forth the specific requirements for states to comply with the law, mandating that each state:

- (ii) provide assurances satisfactory to the Secretary that—
 - (I) under such contracts, payment shall be made to such a contractor only from amounts recovered;
 - (II) from such amounts recovered, payment—
 - (aa) shall be made on a contingent basis for collecting overpayments; and
 - (bb) may be made in such amounts as the State may specify for identifying underpayments;
 - (III) the State has an adequate process for entities to appeal any adverse determination made by such contractors; and
 - (IV) such program is carried out in accordance with such requirements as the Secretary shall specify, including—
 - (aa) for purposes of section [1903\(a\)\(7\)](#), that amounts expended by the State to carry out the program shall be considered amounts expended as necessary for the proper and efficient administration of the State plan or a waiver of the plan;
 - (bb) that section [1903\(d\)](#) shall apply to amounts recovered under the program; and

(cc) that the State and any such contractors under contract with the State shall coordinate such recovery audit efforts with other contractors or entities performing audits of entities receiving payments under the State plan or waiver in the State, including efforts with Federal and State law enforcement with respect to the Department of Justice, including the Federal Bureau of Investigations, the Inspector General of the Department of Health and Human Services, and the State medicaid fraud control unit;

DMAS is promulgating this RAC regulatory package to mirror the requirements of the Secretary of Health and Human Services, through the pre-print state plan pages provided to the states. These prescribed requirements are as follows:

1. DMAS shall make payments only from amounts recovered and on a contingency basis;
2. The fee paid shall not exceed the highest rate paid to Medicare RACs;
3. The payment methodology will be based upon the percentage of the contingency fee;
4. DMAS has an adequate appeal process in place for providers to appeal adverse determinations;
5. The amounts expended are necessary for the proper and efficient administration of the State Plan;
6. Amounts recovered shall be subject to DMAS' quarterly expenditure estimates and funding of the State's share;
7. RAC efforts shall be coordinated with other Medicaid recovery efforts.

As stated above, these regulations follow the prescribed federal pre-printed requirements from which they do not materially differ. This action is therefore in conformity with Code of Virginia § 2.2-4006(A)(4)(c) as an exempt final action.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background document with the attached amended State Plan pages: State Plan Under Title XIX of the Social Security Act Medical Assistance Program: General Provisions – Recovery Audit Contractors (12 VAC 30-10-445), and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

March 19, 2012

/s/ Cynthia B. Jones

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.